

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

1. GREAT LAKES INSURANCE SE,)	
)	
Plaintiff,)	
)	Case No. CIV-22-00702-JD
vs.)	Judge Jodi W. Dishman
)	
2. FREDY VALLE d/b/a VALLE)	
TRUCKING;)	
3. SILVER STAR CONSTRUCTION)	
COMPANY, INC.;)	
4. TYLON MACKEY;)	
5. ISRAEL JUAREZ;)	
6. ORD TRUCKING, INC.)	
7. ZURICH AMERICAN INS. CO.,)	
)	
Defendants,)	
)	
<hr style="width: 45%; margin-left: 0;"/>		
)	
8. ZURICH AMERICAN INS. CO.,)	
)	
Defendant/Third Party)	
Plaintiff,)	
)	
vs.)	
)	
9. PROGRESSIVE NORTHERN INS.)	
CO.,)	
)	
Third-Party Defendant.)	

JOINT STATUS REPORT REGARDING STAY OF PROCEEDINGS

Defendant/Third-Party Plaintiff, Zurich American Insurance Company (“**ZAIC**”),
Plaintiff Great Lakes Insurance SE (“**Great Lakes**”), Defendant Silver Star Construction
Company, Inc. (“**Silver Star**”), Defendant Tylon Mackey (“**Mackey**”), and Third-Party

Defendant Progressive Northern Insurance Company (“**Progressive**”) respectfully submit this Joint Status Report regarding Stay of Proceedings.

1. On January 3, 2024, ZAIC filed its Motion to Stay Proceedings Pending a Determination of Dispositive Motions in the Underlying Suit and Brief in Support (“**Motion to Stay**”). No party opposed the Motion to Stay. After a hearing on the Motion to Stay, the Court filed its Order on January 19, 2024, granting a temporary stay of these proceedings based upon the Court’s finding “that the issues in this case overlap significantly with the issues in the underlying suit.” The Order stayed this case until June 14, 2024 at 11:59 p.m., and ordered the parties to file, on or before June 12, 2024, a joint report as to the status of the underlying suit styled as *Tylon Mackey v. Israel Juarez, ORD Trucking, Fredy N. Valle, Sr. d/b/a Valle Trucking, and Silver Star Construction Company, Inc.*, Payne County District Court Case No. CJ-2020-233 (the “**Underlying Suit**”). The Order also instructed if the parties seek to extend the temporary stay, they should file a motion to extend the stay by June 12, 2024, demonstrating good cause and showing the progress in the Underlying Suit.

2. On April 8, 2024, Silver Star filed its Motion for Summary Judgment (“**MSJ**”) in the Underlying Suit. *See* Docket Report for Underlying Suit, attached hereto as **Exhibit 1**.

3. On April 9, 2024, Israel Juarez and ORD Trucking, Inc. filed their Motion for Partial Summary Judgment and Brief in Support Regarding Plaintiff’s Claim for Punitive Damages in the Underlying Suit (“**MPSJ**”). *See* Exhibit 1.

4. On April 15, 2024, ORD Trucking, Inc.'s counsel filed a Notice of Hearing, advising that its MPSJ would be heard before the Honorable Phillip C. Corley on June 6, 2024 at 1:30 p.m. *See* Exhibit 1.

5. On May 2, 2024, the Underlying Suit was stricken by Judge Corley from the disposition docket. *See* Exhibit 1.

6. On May 10, 2024, Mackey filed Plaintiff's Response and Objections to Defendant's [Silver Star's] Motion for Summary Judgment and Brief in Support. *See* Exhibit 1.

7. On May 20, 2024, Silver Star's counsel filed a Notice of Hearing, advising that its MSJ would be heard on June 6, 2024 at 1:30 p.m. *See* Exhibit 1.

8. On May 31, 2024, Silver Star filed its Reply in Support of its Motion for Summary Judgment. *See* Exhibit 1.

9. On June 6, 2024, the Court heard arguments on the MPSJ and the MSJ. Counsel for Mackey, Valle Trucking, Silver Star and ZAIC were in attendance. At the hearing, Mackey's counsel confessed the MPSJ. The Court issued his ruling that the MPSJ was sustained by agreement.

10. No formal journal entry has yet been entered. However, the docket report sets forth the Court's minute, which states as follows:

JUDGE CORLEY/RECORDED: THIS CASE COMES BEFORE THE COURT ON THE MOTION TO DISMISS AND ON DEFENDANT SILVER STAR'S MOTION FOR SUMMARY JUDGMENT. THE PARTIES APPEAR BY COUNSEL. THE MOTION TO DISMISS IS SUSTAINED BY AGREEMENT. ARGUMENT IS HEARD ON SILVER STAR'S MOTION FOR SUMMARY. THE MOTION IS SUSTAINED AS TO SILVER STAR.

See Exhibit 1.

11. **ZAIC's Position:** In light of the Court's grant of summary judgment in favor of Silver Star as to its nonliability for the claims and injuries of Mackey, ZAIC is **not** seeking an extension of the stay of this declaratory judgment action. ZAIC submits that the MSJ ruling in the Underlying Suit resolves the issue of whether ZAIC, Great Lakes and/or Progressive have any duty to indemnify Silver Star for any judgment obtained against Silver Star by Mackey, as Silver Star was granted judgment as a matter of law as to its nonliability for the motor vehicle accident which resulted in Mackey's injuries and claims against the various parties in the Underlying Suit. Therefore, Silver Star will not be liable for any judgment to Mackey as a result of the underlying accident. ZAIC submits, however, that the issue of whether Great Lakes and Progressive have (or had) a duty to defend Silver Star in the Underlying Suit remains at issue. ZAIC respectfully requests that the Court issue new deadlines in this matter for the parties to resubmit their Motions for Summary Judgment as to the rights and obligations of Great Lakes and Progressive to defend Silver Star in the Underlying Suit.

12. **Great Lakes' Position:** Based on the decision by the Payne County District Court, Great Lakes contends the issue of whether Great Lakes is obligated to defend, or indemnify Silver Star has been decided. However, since the Motion for Summary Judgment was only recently granted, it is still unclear if Mackey will appeal the decision. As such, Great Lakes does not object to the extension of the stay to confirm whether the lower court's decision will be challenged. Further, Great Lakes contends that the issue of whether it was obligated to defend Valle Trucking, or to indemnify Valle Trucking in the event Mackey succeeds in

obtaining a judgment is still outstanding. Great Lakes does not request an extension of the stay but does request the Court enter a new Scheduling Order with enough time for the parties to resubmit their Motions for Summary Judgment in light of the developments in the Payne County case.

13. **Silver Star's Position:** As stated above, Judge Corley in the Underlying Suit granted summary judgment in favor of Silver Star on all claims. Judge Corley found that Silver Star is not vicariously liable for the actions of Defendant Juarez and was not engaged in a joint venture with Defendant Jurez, Defendant ORD Trucking, Inc., and/or Defendant Fredy Valle, Sr. dba Valle Trucking. Silver Star has provided a proposed journal entry to all parties in the Underlying Suit regarding Judge Corley's ruling granting summary judgment in favor of Silver Star. Plaintiff Mackey has agreed to and signed the proposed journal entry. Plaintiff Mackey has not requested that the Court in the Underlying Suit certify the order for interlocutory appeal. However, counsel for Silver Star has not yet received signatures from the other parties in the Underlying Suit regarding the proposed journal entry. Once all parties have executed the journal entry, Silver Star will present it to Judge Corley to be entered. If the ruling in the Underlying Suit is not challenged, Silver Star agrees that the Court should issue new deadlines in this matter for the parties to submit Motions for Summary Judgment as to the rights and obligations owed by Great Lakes and Progressive to Silver Star with regard to the Underlying Suit.

14. **Mackey's Position:** Mackey does not object to the stay. Mackey plans to appeal the ruling of June 6, 2024 in the underlying action in Payne County District Court.

15. **Progressive's Position**: As noted in ¶ 11, the court in the underlying matter has not signed a journal entry regarding its June 6, 2024, ruling on Silver Star's motion for summary judgment. It is unclear at this time whether Mr. Mackey intends to ask the court in the underlying action to certify its ruling for interlocutory appeal to the Oklahoma Supreme Court. If the court in the underlying action does not certify its journal entry for interlocutory appeal, Progressive would agree that a scheduling order for dispositive motions should be entered in the case at bar. If the Court does certify its order, the parties should be afforded an opportunity to bring this to the Court's attention and show good cause why the stay should be extended. The Court should postpone entering a new scheduling order at this time and reset this matter for a status conference 30 days from June 12, 2024.

Respectfully Submitted,

ASTON | MATHIS | CAMPBELL PLLC

By s/Amy E. Hampton

RACHEL C. MATHIS, OBA #16360

AMY E. HAMPTON, OBA # 20235

2642 East 21st Street, Suite 250

Tulsa, OK 74114

(918) 949-9966

FAX: (918) 949-9968

E-Mail: rmathis@amlawok.com

ahampton@amlawok.com

Attorney for Defendant/Third-Party Plaintiff

Zurich American Insurance Company

CERTIFICATE OF SERVICE

I, Amy E. Hampton, hereby certify that on this 12th day of June, 2024, a true and correct copy of the foregoing document was served upon the following via the Court's electronic notification system:

Michael S. Linscott
Doerner, Saunders, Daniel & Anderson, L.L.P.
Two West Second Street, Suite 700
Tulsa, OK 74103-3117
Attorney for Great Lakes Insurance SE

Brian M. Keester
Doerner, Saunders, Daniel & Anderson, L.L.P.
2 West Second Street, Suite 700
Tulsa, OK 74103-3117
Attorney for Great Lakes Insurance SE

Emily E. Williams
Doerner, Saunders, Daniel & Anderson, L.L.P.
210 Park Avenue, Suite 1200
Oklahoma City, OK 73102
Attorney for Great Lakes Insurance SE

J. Chris Horton
J. Chris Horton, PC
PO Box 576
El Reno, OK 73036
Attorney for Silver Star Construction Company, Inc.

James A. Scimeca
Burch, George & Germany
1500 City Place Bldg.
204 N. Robinson, Ste 1500
Oklahoma City, OK 73102
Attorney for Tylon Mackey

Ryan Polchinski
Law Offices of Daniel M. Davis
300 N. Walnut Ave.
Oklahoma City, OK 73104
Attorney for Tylon Mackey

Andrew Polchinski
Law Offices of Daniel M. Davis
300 N. Walnut Ave.
Oklahoma City, OK 73104
Attorney for Tylon Mackey

Bradley E. Bowlby
Starr, Begin & King, PLLC
1800 South Baltimore, Suite 550
Tulsa, OK 74119
Attorney for Progressive Northern Insurance Company

Christopher C. King
Starr, Begin & King, PLLC
1800 South Baltimore, Suite 550
Tulsa, OK 74119
Attorney for Progressive Northern Ins. Co.

s/Amy E. Hampton
AMY E. HAMPTON

AEH/eah